

The Honorable Benjamin H. Settle

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

TODD BRINKMEYER

NO. 3:20-cv-05661-BHS

Petitioner,

[PROPOSED] ORDER GRANTING
RESPONDENT'S MOTION FOR
SUMMARY JUDGMENT

vs.

WASHINGTON STATE LIQUOR AND
CANNABIS BOARD,

CLERK'S ACTION REQUIRED

Respondent.

THIS MATTER is before the Court on Respondent's Motion for Summary Judgment (Motion). The Court has considered the Motion, the Declarations of Rebecca Smith and Captain Josh Bolender, and if filed, any Response and Reply filed in Support of Respondent's Motion, the files and records herein, and the Court is fully advised in the matter. After careful consideration the Court is persuaded that RESPONDENT'S Motion is **GRANTED**.

I. DISCUSSION

In 2012, voters in the state of Washington passed Initiative Measure 502 (I-502), decriminalizing marijuana. I-502 is primarily codified in chapter 69.50 RCW. Statutory requirements for licensure included a three-month residency at the time of application. Wash. Rev. Code § 69.50.331 (2013). This requirement was later amended in 2015 to a six-month requirement. As pertinent here, it is undisputed that the statutory requirement applies to

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1 all members of Limited Liability Companies (LLCs) who are owners of or true parties of interest
2 in marijuana businesses.

3 Brinkmeyer, an Idaho resident, where marijuana is illegal under state and federal law,
4 has previously been vetted as a financier for marijuana businesses in Washington, but is
5 interested in having the ownership of several marijuana retail businesses transferred to him.
6 Based on the residency requirements, Brinkmeyer is unlikely to qualify for licensure.

7 Brinkmeyer claims that the Residency Requirements contained in Wash. Rev. Code §
8 69.50.331 (2020) and associated rules are unconstitutional. Brinkmeyer and the Board disagree.

9 This matter is now before the Court on Respondent's Motion for Summary Judgment.

10 The hereby Court **FINDS** as follows:

11 1. There are no material facts in dispute and the Washington State Liquor and Cannabis
12 Board is entitled to judgment as a matter of law

13 2. **Standing.** Brinkmeyer has failed to establish that he has standing to bring this challenge.
14 The Petition for Declaratory Judgment demonstrates that Brinkmeyer's claims are based on
15 future contingent events that may never occur and he has failed to establish that he has suffered
16 a concrete and particularized injury to a legally protected interest that is actual or imminent.
17 Brinkmeyer also has failed to establish a legally cognizable interest to a marijuana retail license
18 because marijuana remains federally illegal and is contraband per se. *Little v. Gore*, 148 F. Supp.
19 3d 936, 955 (S.D. Cal. 2015).

20 3. **Ripeness.** Brinkmeyer's claims are not ripe because they are entirely dependent on
21 contingent future events.

22 4. **Dormant Commerce Clause.** Washington's Residency Requirements do not violate the
23 dormant Commerce Clause. The Controlled Substance Act (CSA) is a legitimate exercise of
24 Congress's Commerce Clause power, which has prohibited a national legal market and makes
25 marijuana contraband per se. *Gonzales v. Raich*, 545 U.S. 1, 27 (2005). Given that Congress has
26 exercised its Commerce Clause power, dormant Commerce Clause presumptions do not apply

1 and there is no violation of the dormant Commerce Clause here. Further, the CSA forecloses a
 2 national market for marijuana and forecloses Commerce Clause protections. *Predka v. Iowa*, 186
 3 F.3d 1082, 1085 (8th Cir. 1999). Even if a dormant Commerce Clause challenge could be
 4 asserted, the Court concludes that the Residency Requirements are “narrowly tailored to advance
 5 a legitimate local purpose” as set forth in the Declarations of Director Smith and Captain
 6 Bolender. *See Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 139 S. Ct. 2449, 2461-62 (2019)
 7 (internal quotations omitted). This claim fails.

8 **5. Article IV Privileges and Immunities, Fourteenth Amendment Equal**
 9 **Protection, Privileges or Immunities Clauses and Due Process Clause.** The Court concludes
 10 that Brinkmeyer has no fundamental right to a marijuana retail license. *United States v. Fogarty*,
 11 692 F.2d 542, 547 (8th Cir. 1982). As such, Brinkmeyer must establish that there are no
 12 reasonably conceivable state of facts that could provide a rational basis for the classification.
 13 *Heller v. Doe*, 509 U.S. 312, 319-21 (1993); *Washington v. Glucksberg*, 521 U.S. 702, 722
 14 (1997). The Court concludes that Brinkmeyer has failed to do so. Additionally, the Court finds
 15 the justifications provided by Director Smith and Captain Bolender to be persuasive and provide
 16 numerous substantial reasons including, but not limited to, protecting Washington’s prohibition
 17 on vertical integration and marijuana regulatory system, ensuring owners responsible for the
 18 business to be domiciled in Washington to be properly investigated, and following the
 19 enforcement priorities of the *Cole* Memo. The Court concludes that those justifications supply a
 20 rational basis for the Residency Requirements. These claims fail.

21 II. CONCLUSION

22 For the above reasons, this Court should grant Respondent’s Motion.

23 ACCORDINGLY,

24 IT IS HEREBY ORDERED:

25 (1) Respondent’s Motion for Summary Judgment is GRANTED (Dkt. # ____)

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(2) The Clerk is directed to send copies of this Order to counsel for Brinkmeyer, and
counsel for the Respondent.

Dated this _____ day of _____, 2022.

BENJAMIN SETTLE
UNITED STATES DISTRICT JUDGE

Presented by:
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